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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,752	10/22/2003	Peter Lukas	RACK_MOD.IDC	4357
7590	04/15/2005		EXAMINER	
G. F. Gallinger 7420 Milner Dr. Colorado Springs, CO 80920			NOVOSAD, JENNIFER ELEANORE	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/689,752

**Applicant(s)**

LUKAS, PETER

**Examiner**

Jennifer E. Novosad

**Art Unit**

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the foot and header, as in claims 11 and 12, respectively, must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claims 9 and 10 are objected to because of the following informalities:

It is *suggested* that "4" in lines 2 and 3 of claim 9 and "10" in line 2 of claim 10 be written in word, e.g., --four-- instead of "4".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3634

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 and 8-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "assembled rack unit assemblies" in line 14. There is insufficient antecedent basis for this limitation in the claim. This rejection is also applicable to claim 2, line 3, claim 3, lines 4 and 5, claim 4, line 4, claim 8, line 2, claim 9, line 4, claim 10, line 1, claim 11, line 3 and claim 12, line 3. It is noted that a "rack assembly" has been set forth in line 2 of claim 1 and that the assembly has not been set forth as being "assembled".

The use of the phrase "may be" in claim 1 (last line), claim 2, line 3, claim 3, line 4, and claim 9, line 4, renders the claims indefinite since what "may be" to one "may not be" to another and thus the metes and bounds of the claims cannot be properly ascertained since one would not know whether the limitations proceeding the phrase "may be" is being positively required by the claims.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent Application Publication No. 2002/0063100 (Kwang '100).

Art Unit: 3634

Kwang '100 discloses a modular rack comprising a rack assembly having generally rectangular left and right side members whereby each side member having an outer (Figure 1B) side portion and an inner side portion (Figure 1A), a front side portion and a rear side portion, and top (at 11) and bottom edge (at 55) portions; each inner side portion (Figure 1A) having a plurality of spaced cassette end supports (at 45, 50) which generally extend between the front and rear edge portions of the side members and a rear cassette stop (at 10 in Figure 1B) positioned along the end support which extends from the top edge portion to the bottom edge portion; each inner side portion has an upper and lower spacer (see figure 1D) which spaces and maintains the side portions in parallel juxtaposition whereby the spacers extend between spacer attachment means (at 55) on the side members; *with respect to claim 6*, there are two upper and two lower spacers (each spacer includes a front or rear portion shown in Figure 1D as well as 2 elements 36 and 85) that extend between corresponding corners of the side members; *with respect to claim 7*, the spacers include tubular cylinders (85) and the spacer attachment means comprises cylindrical pegs (36); the outer side portions (Figure 1B) of the side members each having a lateral rack attachment means (85, 55 - see Figure 2D) to attach the assemblies laterally (see Figure 2E); the top and bottom edge portions of the side members have interlocking top and bottom edge portion attachment means (60, 65) for vertically attaching (see Figure 2E) the assemblies together whereby this attachment means defines a dovetail (60) and a mated female portion (65); *with respect to claim 9*, the lateral attachment means comprises four corner pins (36) on the outer side of the side members and the other of the side members to be attached has four mating pin receptacles (85); the assembly can support 10 cassettes; and the rack comprising a foot or a header (i.e., a bottom rack or a top rack, respectively).

Art Unit: 3634

It is noted that although the same elements in Kwang '100 have been utilized to depict both the elements of claim 7 and 9, this is permissible since there is not a combination of claims that requires both elements to be present or claimed together.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kwang '100, alone.

Kwang '100 discloses the rack as advanced above.

The claim differs from Kwang '100 in requiring the side members to be molded from plastic.

Although Kwang '100 does not disclose the members being molded from plastic, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have molded the members from plastic for ease in economy and manufacture.

***Conclusion***

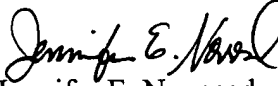
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832.

The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

Art Unit: 3634

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
April 12, 2005